UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

UPSHUR HUMAN RESOURCES, INC. d/b/a
UPSHUR HEAD START[1]

Employer

and **Case** 6-RC-12324

DISTRICT 1199, SERVICE EMPLOYEES
INTERNATIONAL UNION, WV/KY/OH, THE
HEALTH CARE AND SOCIAL SERVICE UNION

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Upshur Human Resources, Inc. d/b/a Upshur Head Start, operates a Head Start pre-school program in various locations within Upshur County, West Virginia, where it employs between 70 and 80 employees. The Petitioner, District 1199, Service Employees International Union, WV/KY/OH, The Health Care and Social Service Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time teachers; excluding all other employees and guards and supervisors as defined in the Act. A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the issue of whether the teachers in the Employer's Head Start classrooms are supervisors within the meaning of Section 2(11) of the Act. The Employer contends that all of the Head Start teachers are supervisors within the meaning of the Act, and consequently, the entire unit is inappropriate. The Petitioner, contrary to the Employer, contends that the teachers are not supervisors.

[1] The name of the Employer appears as stipulated to by both parties at the hearing.

The unit of teachers sought by the Petitioner has approximately eight employees, while the Employer asserts that the petition must be dismissed because the teachers are all supervisors.

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I have concluded that the Head Start teachers herein are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, I have directed an election in a unit that consists of approximately eight employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issue of the supervisory status of the Head Start teachers.

I. OVERVIEW OF OPERATIONS

The Employer operates ten Head Start classrooms at six different locations throughout Upshur County.[2] Approximately 193 children participate in these programs, which are funded by the federal government. In these operations, the Employer employs between 70 and 80 employees.[3] The main office of the Employer, where the management personnel are located, is in Buckhannon, West Virginia. Two of the classrooms are located adjacent to the main offices there. The other classroom locations are between about two and fifteen miles away from the main office.

The overall operations of the Employer are the responsibility of its Executive Director, Sandra Pennington. The Executive Director reports to a Board of Directors, which has the final

[2] Four of the locations have two separate classrooms, and the other two locations only have one classroom each.

[3] In Case 6-RC-12318, the Union petitioned to represent the following unit of employees of the Employer:

All full-time and regular part-time employees employed by the Employer at its Upshur County, West Virginia, facilities, including assistant teachers, family service workers, cooks, bus drivers, custodians, health aide, and Head Start Day Care workers and substitutes; excluding all teachers, coordinators, managers, directors and acting directors, office clerical employees and guards, professional employees and supervisors as defined in the Act.

An election was held in that unit on March 24, 2004. The results of the election were 21 votes in favor of the Union, 20 votes against the Union, and two challenged ballots, which were determinative. The determinative challenged ballots are currently being investigated.

decision-making authority for the Employer. There is also a Policy Council, comprised of members of the community and of parents of children enrolled in the program. The Policy Council has authority, along with the Executive Director and the Board of Directors, to approve certain personnel actions, including hiring and firing employees. Reporting directly to the Executive Director are the following management persons: Fiscal/Personnel Manager; Health Manager; Volunteer Manager; Executive Secretary; Education Manager; Nutrition Manager/Facility Monitor; Social Services Manager; Parent Involvement Manager; Disabilities/Mental Health Manager; and Transportation Manager.[4]

Normally, each classroom has one teacher and one teacher's assistant, as well as substitute teacher's assistants, who sometimes come in during the day to assist with serving lunch to the children, as well as being called to work for the entire day when a teacher's assistant is absent.[5] In addition, there are other individuals who assist the teacher, including foster grandparents, parent volunteers and CWEP workers.[6] There are other employees of the Employer located at the classroom sites, including cooks, custodians and maintenance persons.

The teachers are responsible for preparing a monthly activity plan, which is sent home to the parents, as well as a weekly lesson plan that must be approved by Education Manager Brandi Workman. There is also a daily lesson plan prepared, which often contains individualized activities depending on the needs and skills of the students. These plans are sometimes prepared together with the teacher's assistant. The teachers and their assistants usually discuss the daily activities either at the start of the day or at the end, for the following

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[4] Brandi Workman is the Education Manager, who supervises the classrooms and their activities, which includes the supervision of the teachers and the assistant teachers. The record does not reflect the names of the other managers in the Employer's organization.

[5] It appears that the parties herein use the titles "teacher's assistant "and "assistant teacher" interchangeably.

[6] The foster grandparents receive a stipend from a government funding source other than the Employer. The CWEP workers, sometimes referred to as "welfare to work" recipients, also receive money from a source other than the Employer. The parent volunteers are not paid at all. The record does not reflect how many foster grandparents, parent volunteers and CWEP workers are assigned to the classrooms.

day. Since many of the teachers and their assistants have been working together for an extended period of time, they function as a team and make many of the decisions jointly.

The Employer holds monthly managerial meetings, which the teachers do not attend. The Executive Director, Executive Secretary and the managers of the various departments attend these meetings. Workman also holds monthly meetings, which are attended by the teachers and the cooks.[7] Some of the teacher's assistants are invited to attend these meetings by the teacher with whom they work, although Workman does not require their attendance. At these monthly staff meetings, Workman conveys information brought up at the management meetings, and discusses issues such as licensing, testing and accreditation.

The teachers also meet with the parents during "family nights" which are held at various times throughout the school year. On those nights, the teachers and teacher's assistants must work for a few hours in the evening. Because the Employer does not allow teachers to approve overtime for the teacher's assistants beyond the normal 40 hours per week, the teachers are instructed to allow the teacher's assistants to take off a number of hours equal to those worked on family night during the following week. The teachers sign the timesheets of the teacher's assistants to verify the number of hours worked before the timesheets are submitted to the payroll office.[8]

The teachers fill out evaluations for the teacher's assistants and substitutes who work in their classrooms. On the form, in addition to assessing the person's work performance and productivity, the teachers are asked whether they recommend that the person's employment be continued and whether the teacher recommends a salary increase, as well as how much of an increase is recommended.

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[7] At the hearing, the parties stipulated, and I find, that Education Manager Brandi Workman is a supervisor within the meaning of Section 2(11) of the Act, inasmuch as she has the authority, inter alia, to discipline and assign and direct the work of employees.

[8] The timesheets signed by the teachers and submitted to the main office do not reflect the evening hours worked on family nights, nor do they reflect the hours taken off the following week. The teachers are instructed to accomplish these changes in schedules informally.

The teachers must have at least a two-year associate degree to qualify for the position. The starting wage is $8.37 per hour for teachers with an Associate degree, and $9.64 per hour for those with a Bachelor's degree. The teachers do not interview or sit in on interviews with prospective teacher's assistants. Those decisions are made solely by management. Likewise, the teachers do not have authority to fire or suspend employees; these decisions are also made by management.

II. SUPERVISORY STATUS OF THE HEAD START TEACHERS

Before examining the specific duties and authorities of the Head Start teachers, I will review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000), Hydro Conduit Corp., 254 NLRB 433, 437 (1981). Thus, the exercise of the indicia listed in Section 2(11) of the Act in merely a routine, clerical or perfunctory manner will not confer supervisory status on the individual. Chicago Metallic Corp., 273 NLRB 1677 (1985). Moreover, employees who are acting merely as conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, 280 NLRB 1222, 1224 (1986).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB 1409 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g. Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra at 1409. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g. Fred Meyer Alaska, Inc., 334 NLRB 646, 649 (2001); Pepsi-Cola Co., 327 NLRB 1062, 1064 (1999). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See Michigan Masonic Home, supra at 1410; Chevron U.S.A., 309 NLRB 59, 61 (1992). The Board and the courts have recognized that an employee does not become a supervisor merely because he has greater skills and job responsibilities than fellow employees or because he gives some instructions or minor orders. Byers Engineering Corp., 324 NLRB 740 (1997); Chicago Metallic Corp., supra.

As described previously, the Employer asserts that all of the teachers, i.e., the entire proposed bargaining unit, are supervisors within the meaning of the Act, and, consequently, the petition must be dismissed. The Union, on the other hand, asserts that the teachers do not possess true supervisory authority and therefore are eligible to vote in an election. I conclude, for the reasons discussed below, that the Employer has not met its burden of establishing that the teachers are statutory supervisors and they are, therefore, eligible to vote. I shall discuss each of the indicia of supervisory status as they relate to the teachers in the Employer's Head Start program herein.

Hiring

In order for a teacher's assistant to be hired, the individual interviews with Education Manager Brandi Workman. Workman then makes recommendations to the Executive Director. The Executive Director cannot hire an individual unless the Board of Directors and the Policy Council approve the decision. There is no evidence that the teachers play any role in the hiring process.

The Employer, however, contends that the teachers can effectively recommend hiring. This assertion is based on the testimony of teacher Denise Farnsworth, who testified that she was once consulted about an applicant for a teacher's assistant position and the person was hired. However, Farnsworth explained that the applicant had merely listed her as one of the personal references in the application, and, further, Farnsworth has no idea what weight, if any, her reference had in the decision to hire. I am not persuaded that this single example of a teacher being contacted as a personal reference is sufficient evidence to prove that teachers have the authority to effectively recommend hiring. Thus, I find that the Employer failed to meet its burden to prove that the teachers effectively recommend hiring.

Discharges

With regard to discharges, no teachers have the authority to fire anyone. The procedure for the termination of an employee is for the Executive Director to recommend such action to the Policy Council. The Policy Council may consult the Board of Directors before making a decision on a termination. There is no evidence that the teachers play any part in decisions relating to terminations.

The Employer contends that teachers can effectively recommend termination because, on the evaluations that the teachers fill out for the teacher's assistants in the classroom, there is a box where the teacher can check whether or not the teacher recommends that the teacher's assistant's employment should be continued. However, the Employer produced no evidence that any teacher ever recommended, effectively or not, that a teacher's assistant not continue to

be employed. Brandi Workman testified that she knew of no instance where a teacher ever effectively recommended that a teacher's assistant be fired. The fact that the teachers check a box on the evaluations giving their opinion as to whether a teacher's assistant should continue to be employed does not establish that the teachers actually have the authority to effectively recommend discharge. Thus, because of a lack of probative evidence to support the Employer's contention, I find that the Employer failed to meet its burden to establish the teachers' authority to effectively recommend discharge.

Transfers

The Employer contends that teachers can effectively recommend transfers of employees based on the evaluation forms filled out by teachers, and based on one incident described by Workman. On the evaluation form, there is a box where the teacher can check whether or not the teacher recommends a job change for the teacher's assistant.[9] However, no evidence was presented to show that any teacher has ever checked the box recommending job change and that this recommendation was effective in effectuating a transfer for a teacher's assistant. In fact, in two of the three examples of evaluations filled out by teachers that were submitted into evidence, the teacher failed to check either box in this category.

The only actual example asserted by the Employer in support of its position involved a situation where a teacher complained to Workman about a problem the teacher's assistant had with absenteeism. Workman discussed the problem with the teacher several times and then, based on her investigation and the request of the teacher, decided to move the teacher's assistant to a different location. However, there is insufficient evidence that this was done because of an effective recommendation by the teacher involved. Further, this was the only

[9] It is not clear that a recommendation of a job change necessarily should be interpreted as recommending a transfer.

example of a transfer brought out in the evidence. Consequently, I find that there is insufficient evidence that the teachers can effectively recommend transfers.[10]

Discipline

The Employer asserts that the teachers have the authority to discipline and effectively recommend discipline. In support of this contention, Workman testified that teachers have such authority, but failed to be specific as to the extent of this authority. Workman referred to "Employee Warning Reports" which, according to Workman, are to be used by the teachers to recommend discipline for their assistant teachers. However, the four teachers who testified at the hearing all stated that they had never used this form and had never been instructed that they were authorized to use the form.

Workman states that teachers can discuss disciplinary problems with the assistant teachers and write up a report on the matter. The only example of this ever being done was one situation where teacher Donna Thomason spoke to a substitute assistant teacher about some concerns. Thomason documented her discussion with the individual and sent this report to Workman. However, there is no evidence that this report was ever placed in the individual's personnel record or that it led or could lead to further discipline.

The only specific example of recommending discipline also involved teacher Donna Thomason, who was told about some inappropriate remarks made by a substitute assistant teacher when Thomason was not present. In that situation, Thomason did not handle the matter herself, but rather reported it to Workman. Thomason then met with Workman and the Executive Director. The employee involved then was called in and they discussed the matter.

[10] The Employer described another incident where a teacher was unhappy with the work performance of a CWEP worker and asked to have the worker removed from her classroom. Workman notified the Volunteer Coordinator who, according to Workman, removed the worker from that classroom. The record does not indicate whether the CWEP worker was transferred or discharged. However, the CWEP workers are not employees of the Employer, and it is well settled that the Board will not find an individual to be a supervisor within the meaning of Section 2(11) based on the supervision of employees of another employer. In order to qualify as a statutory supervisor, the individual must supervise employees of the employer in question. Crenulated Co., 308 NLRB 1216 (1992); Fleet Transport Co., 196 NLRB 436, 438 fn. 6 (1972); Eureka Newspapers, 154 NLRB 1181, 1185 (1965).

Although Thomason recommended that the employee be discharged, the only discipline given was a written warning, issued by Workman.

The Board has held that minor reportorial power is not evidence of statutory supervisory authority. Passavant Health Center, 284 NLRB 887, 889 (1987). In order to be considered supervisory, the report on misconduct must lead to disciplinary action and must be able to affect the employee's tenure or job status. Franklin Hospital Medical Center d/b/a Franklin Home Health Agency, 337 NLRB 826, 830 (2002); Ten Broeck Commons, 320 NLRB 806, 812 (1996). To confer true supervisory status, the exercise of disciplinary authority must lead to personnel action against the individual without any further independent investigation or review of the matter by management personnel. Franklin Hospital Medical Center d/b/a Franklin Home Health Agency, supra; Beverly Health & Rehabilitation Services, 335 NLRB 635, 669 (2001).

In the instant case, the Employer has failed to show that the teachers can independently discipline any employees without approval from management. Further, the Employer has not proven that the teachers have the authority to effectively recommend discipline. In these circumstances, I find that Employer has not met its burden of proof to show that the Head Start teachers possess the authority to discipline or effectively recommend discipline, as required to warrant a finding that they are supervisors within the meaning of the Act.

Suspensions

The Employer contends that the teachers can recommend that their teacher's assistants be suspended. However, Workman's assertion in this regard was made without any evidence to support this conclusion. In fact, Workman also stated that no teacher has ever recommended a suspension. Further, Workman explained that the Employer's policy is that no employee can be suspended without the approval of the Executive Director and the Policy Council.[11] Thus, I

[11] The Employer submitted the Employer's disciplinary policy into evidence at the hearing. That policy does not have a provision for the suspension of employees, only oral and written reprimands, probation and termination. Inasmuch as there was no evidence presented regarding any suspensions, and the Employer's policy does not include suspension as an option in the disciplinary steps, it appears that the

find insufficient evidence that teachers have the authority to suspend or effectively recommend suspensions.

Layoff and Recall

There was no evidence in the record to indicate that teachers play any role in layoffs or recalls, nor that they can effectively recommend such actions. Consequently, I find that the Employer failed to establish that the teachers possess any authority in this regard.[12]

Promotions

The Employer asserts that the teachers have the authority to effectively recommend promotions. In support of this assertion, the Employer submitted the evaluations filled out by the teachers for the teacher's assistant, wherein the teacher can check a box recommending promotion or not.[13] The Employer further argues that, according to Workman, a teacher once recommended that a teacher's assistant be promoted, and that person was offered a position as a teacher.

However, I find these arguments unpersuasive to show that the teachers actually possess the authority to effectively recommend promotions. First, Workman's testimony regarding the promotion of a teacher's assistant was vague and unspecific. There was no evidence submitted to substantiate when this promotion occurred, who the teacher and/or the teacher's assistant were, or what part the teacher's recommendation played in the decision to promote the individual. The mere fact that a recommendation was made and then the person received a promotion does not establish that the decision was based on that recommendation. Further, Workman also described, in a similarly nonspecific manner, other situations where

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Employer does not use suspensions as a means of discipline at its facilities. Thus, it appears that Workman's assertion that teachers can recommend suspension is contradicted by the Employer's own policy.

[12] The Employer does not address layoff or recall in its brief.

[13] I note that on two of the three evaluations submitted as evidence, the teacher failed to check either box on this subject.

teachers have recommended promotions for teacher's assistants, and those recommendations were not followed.

With respect to the example provided by the Employer in which teacher Linda Jane Martin recommended a promotion for her teacher's assistant, there is no evidence in the record that Martin effectively recommended the promotion. Thus, Martin explained that she was asked about the individual by the Executive Secretary because she was one of three names listed by the applicant as a reference, and Martin had no idea what weight, if any, her recommendation had in the decision. In fact, Workman described the process by which decisions about promotions are made. When a job is to be filled, a personnel committee that is part of the Board of Directors receives recommendations from teachers and conducts an independent investigation of the candidate. After its investigation, the personnel committee makes recommendations to the Board of Directors and the Policy Council, who make the final decision.

Thus, because the Employer provided insufficient evidence to prove that the teachers effectively recommend promotions, I find that the Employer did not meet its burden of proof regarding this indicia of statutory supervisory authority.

Assignment and Direction of Work

In support of its contention that the teachers assign work, the Employer points to the teachers' responsibility to call substitutes when the teacher's assistant in her classroom will be absent. However, according to the testimony of Workman, she provides each teacher with the names of two possible substitutes. The teachers are instructed to give the substitutes equal numbers of hours to work. Thus, the teachers do not use any independent judgment in their decision as to which substitute to call.

Often, the issue of whether an individual has statutory supervisory authority to assign work involves a determination of whether independent judgment is used in choosing one employee over another, based on the employees' skills, to perform a given task. Since there is

only one teacher's assistant in each classroom, there obviously is not any independent judgment in determining what tasks should be given to each teacher's assistant.[14]

The Employer also asserts that the teachers possess the authority to direct the work of the teacher's assistants. In this regard, the Employer contends that the teachers choose the daily activities of the teacher's assistants. However, from the testimony of teachers Linda Jean Martin and Denise Farnsworth, it is clear that the teachers work as a team with the teacher's assistant in their classroom. According to Martin and Farnsworth, the teachers and the teacher's assistant meet either at the end of the day or early in the morning and discuss the activities for the day. Together, they divide up the activities between them.

Further, the teachers testified that their teacher's assistants know what is expected and the teachers have no need to direct their work. Martin testified that her teacher's assistant looks at the daily lesson plan and prepares the supplies needed for the activities for the day without any direction from Martin. Likewise, Farnsworth testified that her teacher's assistant decides for herself whether to work with the children on various activities. While the teacher has the primary responsibility to make sure that all of the preparations are done for the activities, the direction of work of the teacher's assistant appears to be routine.[15]

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[14] In its brief, the Employer also asserts that evidence of the teacher's authority to assign work was shown when a teacher recommended her teacher's assistant for a promotion. I have already discussed the examples offered by the Employer as indicia of effectively recommending promotions in the previous section above. While I do not agree that recommending promotions is evidence of the authority to assign work, nevertheless, for the reasons stated in discussing the Employer's failure to establish that teachers effectively recommend promotions, I find this evidence is insufficient to establish that teachers effectively assign work.

[15] In its brief, the Employer asserts that some teachers take their teacher's assistants with them to visit homes of their students and/or to monthly staff meetings with Workman. It appears that this assertion would relate more to the assignment rather than to the direction of work. Regardless of which indicia of supervisory authority these activities relate to, the record is unclear whether the teachers require the teacher's assistants to accompany them to the meetings and/or the home visits, or whether they merely invite the teacher's assistants to take part in them. Further, it is unclear from the record how frequently home visits are made. Moreover, even if the teachers have the authority to assign their teacher's assistants to accompany them to the meetings and/or home visits, this assignment is too sporadic and minimal a function upon which to base a finding of statutory supervisory authority. In these circumstances, I find this evidence insufficient to conclude that the teachers possess the authority to direct work.

Finally, the Employer asserts, as evidence that the teachers possess the authority to direct the work of employees, that the teachers can discuss problems that arise with employees other than the teacher's assistants with Workman and with the individuals in question. However, this assertion appears to refer to an incident described wherein a teacher had a problem with a CWEP worker. As explained previously, the Board will not find an individual to be a supervisor within the meaning of Section 2(11) based on the supervision of employees of another employer. In order to qualify as a statutory supervisor, the individual must supervise employees of the employer in question. Crenulated Co., 308 NLRB 1216 (1992).

Accordingly, I find that the Employer has not met its burden of proof to show that the Head Start teachers possess the authority to assign and responsibly direct the work of employees, as required to warrant a finding that they are supervisors within the meaning of the Act.

Reward

The Employer asserts that the teachers have the authority to reward employees because of the evaluation forms the teachers complete for their teacher's assistant. On the evaluation form, the teacher can check a box indicating whether or not the teacher recommends a pay increase, and, if so, how much of an increase is recommended. However, Workman testified that she was unaware what weight, if any, such recommendations had in the decisions on pay increases, since those decisions are made by upper management, including the Executive Director, the Policy Council and the Board of Directors.

Workman was unaware of any recommendation by a teacher regarding a wage increase in which an increase was given to a teacher's assistant based on the teacher's recommendation. In fact, the only specific example provided in the record was from teacher Denise Farnsworth, who recommended a ten-cent per hour raise for her teacher's assistant. Despite her recommendation, the teacher's assistant was not granted the raise. There was no

evidence presented to indicate that a raise had ever been awarded to any employee because of a recommendation by a teacher.

Thus, I find insufficient evidence to support a finding that the Head Start teachers possess the authority to effectively recommend rewards for employees.

Adjustment of Grievances

The Employer contends that the teachers have the authority to adjust grievances or to effectively recommend the adjustment of grievances. The only record evidence in this regard consists of statements by Workman on the subject. Workman made a conclusionary statement that teachers have the authority to adjust grievances, but could provide no specific examples of this. According to Workman, any grievance can then be brought before the Executive Director and after that to the Board of Directors for resolution. There is no evidence in the record of any teacher ever adjusting any grievance of an employee. Workman knew of no grievances that had been resolved by a teacher. Further, none of the four teachers who were witnesses at the hearing gave testimony regarding the authority to adjust grievances.

I find such vague assertions that the teachers possess such authority to be unpersuasive. The Board has held that the adjustment of minor complaints was insufficient to prove supervisory status. Ken-Crest Services, 335 NLRB 777, 779 (2001). In that case, the alleged supervisor heard only minor complaints that could be put in writing to higher management if not resolved. See also, Beverly Enterprises, Alabama, Inc. d/b/a Riverchase Health Care Center, 304 NLRB 861, 865 (1991). The Board has repeatedly held that the resolution of minor complaints is insufficient to establish supervisory status. Illinois Veterans Home, 323 NLRB 890, 891 (1997); Ohio Masonic Home, 295 NLRB 390, 394 (1989). The Employer failed to provide evidence that teachers actually adjust any grievances at all, minor or otherwise. Thus, I find that the Employer failed to prove that the teachers possess the authority, as statutory supervisors, to adjust grievances of employees.

Secondary Indicia of Supervisory Authority

The Employer contends that certain factors other than the statutory indicia weigh in favor of finding that the teachers are supervisors within the meaning of the Act. One such argument proffered by the Employer is that the teachers are designated as "supervisors" and that they attend supervisory meetings. The title given to an individual is insufficient to confer supervisory status. Beverly Enterprises, Alabama, Inc. d/b/a Riverchase Health Care Center, 304 NLRB at 865; Pine Manor Nursing Home, 238 NLRB 1654, 1655 (1978). The record further reflects that, contrary to the assertion by the Employer, the teachers do not attend supervisory meetings. The meetings attended by the teachers are run by Workman and are also attended by the cooks as well as some teacher's assistants, and there is no indication that these are supervisory meetings. The Employer also contends that the teachers must be supervisors because of the amount of discretion and responsibility they have for organizing the classroom, planning and implementing the lessons, and carrying out the policies of the Employer.

The Employer further asserts that the teachers are supervisors because they relay information to the teacher's assistants and other individuals in the classroom from higher management, and because they initial timesheets. Both of these functions are ministerial and lacking in the use of independent judgment. As previously stated, merely acting as a conduit to relay information from management to employees is not indicative of supervisory status. Bowne of Houston, 280 NLRB at 1224.

More significantly, non-statutory indicia can be used as background evidence on the question of supervisory status but are not themselves dispositive of the issue in the absence of evidence indicating the existence of one of the statutory indicia of supervisory status. Ken-Crest Services, 335 NLRB at 779; Training School of Vineland, 332 NLRB 1412, fn. 3 (2000); Chrome Deposit Corp., 323 NLRB 961, 963 fn. 9 (1997). It is well settled that supervisory status cannot be proven through secondary indicia alone, without the presence of any one of the statutory indicia. North Jersey Newspaper Co., 322 NLRB 394 (1996); Billows Electric Supply, 311 NLRB

878 fn. 2 (1993). Thus, it is unnecessary to further discuss each of the secondary indicia raised by the Employer, inasmuch as I have already found none of the statutory indicia to be present.

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining[16] within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time teachers employed by the Employer at its Upshur County, West Virginia, facilities; excluding all office clerical employees and guards, other professional employees and supervisors as defined in the Act and all other employees.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by District 1199, Service

[16] At the conclusion of the hearing, the Employer's counsel, for the first time, raised the possibility that the petitioned-for teachers might appropriately be included in the unit in Case 6-RC-12318, if they are not found to be supervisors within the meaning of the Act. While counsel asserted that the teachers might share a community of interest with the employees in the stipulated appropriate bargaining unit in that case, no evidence was introduced to support this contention at the instant hearing, and this contention was not pursued in the Employer's post-hearing brief. Moreover, I note that the unit in Case 6-RC-12318, discussed above in footnote 3, specifically excludes all teachers.

Employees International Union, WV/KY/OH, The Health Care and Social Service Union. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full

names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **April 15, 2004**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **April 22, 2004**. The request may **not** be filed by facsimile.

Dated: April 8, 2004

/s/ Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

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